1152.

SUPREME COURT OF THE UNITED STATES.

No. 173.

JOHN W. YARBOROUGH, TRUSTEE, &c., AND HENRY SHULTZ,

vs.

THE BANK OF THE STATE OF GEORGIA ET AL.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR GEORGIA.

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J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA:

To the judges of the circuit court of the United States for the district of Georgia.

John W. Yarborough, of the town of Hamburg, in the State of South Carolina, a citizen of the State of South Carolina, and who is trustee of Henry Shultz, an insolvent debtor, and for the creditors of the said Henry Shultz, and Henry Shultz, of the town of Hamburg, in the State of South Carolina, and a citizen of the State of South Carolina, bring this their bill, in the nature of a bill of revivor and supplement, against the Bank of the State of Georgia, located in the city of Savannah, in the State of Georgia, a corporation created by, and existing under, the acts of the Legislature of the State of Georgia, the president, directors, and all the stockholders of the said the Bank of the State of Georgia, and every of them, are averred to be citizens of the State of Georgia; John McKinne and Gazaway B. Lamar, both of whom are citizens of the State of Georgia, and the City Council of Augusta, in the State of Georgia, a municipal corporation created by, and existing under, and by virtue of acts of the Legislature of the State of Georgia, the mayor, members, and all other officers and corporators of said municipal corporation, are citizens of the State of Georgia. And thereupon your orators complain, and say, that heretofore, on the ninth day of May, in the year of our Lord one thousand eight hundred and twenty-one, Christian Breithaupt, then in life, but since deceased, and at that time a citizen of the State of South Carolina, and your orator, Henry Shultz, also at that time a citizen of South Carolina, exhibited their original bill of complaint, in this honorable court, against the Bank of the State of Georgia, and others in said bill of complaint (which is now in this honorable court) named and charged. Which said bill, after stating divers matters and things as therein contained, prayed that the bridge, in said bill of complaint mentioned and described, might be decreed to be liable to the redemption of bridge bills in preference to a certain mortgage to the Bank of the State of Georgia on said bridge; and that the court should make such order as would be necessary to authorize the holders of bridge bills to present their claims before said court, that they might have an equitable and ratable proportion of the proceeds of said bridge when the same could be safely sold; and that the Bank of the State of Georgia might be enjoined from proceeding to sell the said bridge, under the executions in said bill of complaint mentioned; and that the plaintiffs in the mayor's court, in the city of Augusta, should be enjoined from proceeding to the sale of the same; and that all the holders of bridge bills might be enjoined from proceeding to sell the said bridge under judgments or executions to be thereafter obtained; and that the court would grant such relief as to justice should appertain.

That, pursuant to the prayer in said bill, the said circuit court, on the twelfth day of May, eighteen hundred and twenty-one, ordered an injunction to issue to stay proceedings under the several judgments in said bill mentioned, obtained in the mayor's court of Augusta; and, on the thirteenth day of June, in the same year, it was by said court ordered, that an injunction issue in said cause to stay the sale of said bridge until the further order of the circuit court of the United States for the Georgia district should be had thereon.

To which said original bill there are made sundry exhibits, as parts and portions of said bill, marked as exhibits A, B, C, D, E, F, and G. And the complainants in said bill likewise prayed writs of subpœna to issue, according to the rules and usages of said court, commanding the defendants in said bill to appear and answer the charges in said bill contained.

That, on the twelfth day of May, eighteen hundred and twenty-one, the said complainants, by leave of the court, exhibited an amendment to said original bill of complaint, in which, after stating and charging divers matters and things as therein contained, prayed a writ of subpœna to be directed to Wm. B. Bullock, Samuel Hale, Thomas Cumming, and John McKinne, (parties defendant to said bill and amendment,) commanding them to appear, at a day certain, to answer to the premises, and to abide the decree of the court touching the same. To which amendment there is an exhibit of documents made, marked exhibit "H."

That afterwards, at the December term of the said circuit court of the United States for the district of Georgia, the Bank of the State of Georgia, by its president, under the corporate seal of said bank, and the corporal oath of Samuel Hale, the president of the branch of said bank in the city of Augusta, submitted and filed its answer to the said bill and amendments; to which said answer there are sundry documents annexed, marked exhibits A, B, C, D, E, F, G, H, and I.

That, on the ninth day of May, eighteen hundred and twenty-two, John McKinne filed in said court his answer to said bill and amendments. To which said answers of the Bank of the State of Georgia, and of John McKinne, the complainants in said bill, on the thirteenth day of May, in the same year, filed a general replication.

That, on the twenty-ninth day of July, eighteen hundred and twenty-two, the complainants, by leave of the court first had, further amended their said bill in relation to a certain lot in the city of Augusta, number seventeen, and the buildings thereon, known as the Bridge Bank, in and by which the Bank of Augusta, Daniel Savage, and James Frasier, were made parties, and the writs of injunction, to stay the sale of said lot, and of subpœna, were prayed by complainants, and granted by the court. To which said amended bill, Thomas Cumming, president of the Bank of Augusta, filed his plea to the jurisdiction of the court on the sixteenth day of April, eighteen hundred and twenty-three; and on the first day of September, in the same year, Daniel Savage and James Frasier filed their several answers to said amended bill.

That, at May term of the said circuit court of the United States for the district of Georgia, in the year eighteen hundred and twenty-three, the complainants further amended their said bill, by leave of the court, and the consent of the defendants' solicitor; and, among other things, as therein appears, prayed the writ of subpœna against Thomas Cumming, president of the Bank of Augusta, to appear and answer the charges contained in said amendment.

And afterwards, on the thirteenth day of December, eighteen hundred and twenty-three, it was, on motion of complainants' solicitor, ordered that they have leave to dismiss their said bill as to the Bank of Augusta, one of the defendants.

Which said original bill, with the several exhibits thereto appended as part thereof, together with the several amendments herein before stated, formed the original bill of complaint of the complainants, which, together with the answers of the defendants as hereinbefore stated, with the exhibits thereto appended, and the general replication of the complainants to said answers, made up the pleadings as between the parties complainant and defendant; all of which will appear by reference being had to the records and files of this honorable court, and which these complainants pray may be taken and considered together, as the original bill, answers, and replications in said cause.

That, in the progress of said cause, and whilst the same was pending before the honorable the judges of the circuit court of the United States for the district of Georgia, various and numerous orders were made by said court, as connected with, and appertaining to, said cause; and, amongst said decretal orders, the said court, on the twenty-first day of December, eighteen hundred and twenty-one, by and with the consent of the parties, complainants and defendants, and of certain attaching creditors, did order, that Freeman Walker and Christopher Fitzsimmons be, and they are hereby, appointed commissioners for the intent and purpose of selling the Augusta bridge and its appurtenances, as mortgaged to *to* the State Bank of Georgia. That the parties (complainant and defendant) should, within thirty days, severally execute powers of attorney to the said commissioners to sell and dispose of the said bridge, in pursuance of said order, and under the conditions in the said order prescribed; and that the said commissioners should make return to the then next session of said court of all and whatsoever should be done by them in that behalf. That, on the ninth day of May, eighteen hundred and twenty-two, (it being a day of the term of said circuit court,) Freeman Walker and Christopher Fitzsimmons, by Freeman Walker, who were appointed commissioners for the intent and purpose of selling the Augusta bridge and its appurtenances, as mortgaged to the Bank of the State of Georgia, submitted their report under said order, in which they say, that, having letters of attorney from the complainants and from the Bank of the State of Georgia, authorizing the sale of the Augusta bridge, in pursuance of the decree, they proceeded to advertise the same for sale, and appointed Thursday, the

eleventh day of April, 1822, for that purpose; but before that period arrived information was received that Col. John McKinne was also a defendant; and as no letter of attorney had been received from him, the commissioners could not conceive themselves authorized to dispose of the property in question. That personal [application] was made to Col. McKinne, and he was earnestly solicited to grant his authority and permission to sell, but he positively refused.

On the thirteenth day of the same month of May, in the same year, (it being a day in the term of said court,) it was, on motion of the solicitors for the Bank of the State of Georgia, and by consent of complainants, ordered, that Freeman Walker, esq., and Christopher Fitzsimmons, esq., be, and they were hereby, appointed commissioners of the court for the purpose of selling the Augusta bridge and its appurtenances, and that they be authorized to take peaceable possession of the same; and further directed the said commissioners in their duties in advertising the terms of sale, and disposition to be made by them of the proceeds of the said sale, restricting them, that said bridge should be put up at $50,000, and not to be sold for a less amount; and if not sold, the commissioners were authorized to receive the tolls, and appropriate such portion of them as might be necessary to the repairs of the bridge, depositing the residue monthly in one of the banks of Augusta, subject to the order of the court; and that return should be made by the said commissioners to the court, at its then next session, of all and whatsoever should be done in that behalf.

On the seventeenth day of December, eighteen hundred and twenty-two, (it being a day in the term of said court,) the said commissioners, Christopher Fitzsimmons and Freeman Walker, esq's, made their report to the court, in which they state that, on the fifth day of August, 1822, they went into the possession of the said bridge and appurtenances, and received the tolls at the same, up to the ninth day of December inclusive of the same year; that the bridge and its appurtenances was sold on the 28th day of November, 1822, at the market house in the city of Augusta, when the Bank of the State of Georgia, by their agent, Samuel Hale, esq., being the highest and best bidder, the same was knocked off to that corporation at the price and for the sum of seventy thousand dollars, and had complied with the terms of the sale. That the tolls of the bridge from the fifth day of August to the ninth day of December inclusive, was $4,638 $\frac{20}{100}$, from which deduct the expenditures for repairs, rents, and all incidental expenses, left a nett balance of $1,686 36 in the hands of the commissioners, subject to the order of the court; and the said commissioners, under the further order and direction of the court, deposited, in the Bank of the State of Georgia, the sum of seventy thousand dollars, the sum for which the said bridge was sold; and likewise the sum of $1,686 36, the nett balance of the tolls of said bridge, after deducting all expenses, making, together, the sum of seventy-one thousand and six hundred and eighty-six dollars and thirty-six cents, (71,686 36.) For which said sum of seventy-one thousand six hundred and eighty-six dollars and thirty-six cents the

Bank of the State of Georgia, under the order of said court, issued its certificate, that Christopher Fitzsimmons and Freemen Walker, esq's, in pursuance of the order of said court, had deposited in the Bank of the State of Georgia, to the credit of the cause of Henry Shultz and Christian Breithaupt, complainants, against the Bank of the State of Georgia and others, defendants, then pending in equity in the said court, the sum of seventy-one thousand six hundred and eighty-six dollars and thirty-six cents, which sum was to bear interest at the rate of six per cent. per annum from the date of said certificate, and to be subject to the order of the said sixth circuit court in the same manner as funds deposited under the laws of the United States by the officers of said court; which certificate of deposite was, under an order of one of the judges of said court, bearing date on the seventeenth day of February, eighteen hundred and twenty-three, deposited with the clerk of the said circuit court.

That, in the further progress of said cause, by leave of the court, numerous witnesses were examined on interrogatories, and their answers taken in writing, both on behalf of complainants and defendants in said cause. All of which testimony is of file in this honorable court, and appertaining to said cause.

On the sixteenth day of July, eighteen hundred and twenty-four, the honorable the judges of the sixth circuit court of the United States for the district of Georgia, in furtherance of the proceedings in said cause, made an interlocutory decree, or decretal order, preparatory to a final decree, in and by which a reference should be had to the register to inquire and report the state of accounts between the McKinnes and the State Bank, upon the loan of $50,000, the sales of the Warehouse square, (specifically pledged for said loan,) the amount of tolls received at the south end of the bridge, from the time it was taken possession of in behalf of the Bank of the State of Georgia, and to report upon such other discounts as the complainant might insist upon as proper to be made from the same sum. That the said register should inquire and report the number of bridge bills then actually out, with the holders thereof respectively, and such facts tending to prove them honest and bona fide holders thereof, as each case might severally suggest; also the sums taken by the complainants, or either of them, at the north end of the bridge, from the time the south end passed into the hands of the defendants, or their agents, or any other public officer at their instance; and generally the state of accounts between Henry Shultz and the Bridge Company; and also report upon such discounts or charges as the defendants might suggest and give proof of, as proper against the complainants, or either of them.

In order to enable the register to carry into effect the said decretal order of the court, the evidence of numerous persons was taken in writing, and which is now of file in said court, as appertaining to said cause. That, on the seventeenth day of December, eighteen hundred and twenty-four, (it being a day in the term of said court,) the said register filed his report under said order; to which report, the complain-

ants, on the day thereafter, filed their exceptions, in writing, in said court.

And the court ordered that the parties, complainants and defendants, should have leave to adduce additional testimony as to the solvency or insolvency of John McKinne and Barna McKinne on the third day of May, 1819, and on the 10th day of June, 1819, and that they have leave to take out commissions for that purpose; the testimony so to be taken to be used as testimony in the cause, or otherwise, as the court might thereafter adjudge; under which said order further testimony was taken by each party, and which is now of file in said court, and appertain to the proceedings thereof in said cause; that, on the ninth day of May, eighteen hundred and twenty-five, (being a day of the regular term of said circuit court,) by the order of said court, the case was opened and testimony in relation to the insolvency of John McKinne and Barna McKinne read, and witnesses sworn and examined in court, on the part of the complainants, and their testimony entered on the minutes of said court.

On the twelfth day of May, eighteen hundred and twenty-five, (it being a day in the regular term of said court,) their honors William Johnson and Jeremiah Cuyler, judges of said circuit court of the United States for the district of Georgia, presiding, the clerk of said court was ordered to certify to the Supreme Court a difference of opinion in said case on two points:

1st. Whether the complainants are entitled to relief.

2d. What relief should be decreed to them.

Unless in thirty days he should be instructed, by Judge Cuyler, to enter a decree *pro forsia* for either party.

And on the same day of the same term of the court, on motion of complainants' solicitor, and it appearing that there would be a considerable surplus of the proceeds of the sale of the bridge opposite Augusta, even after discharging the entire claim of the Bank of the State of Georgia, and it appearing that the complainant Christian Breithaupt was prosecuting said cause for the benefit of all the holders of bridge bills, it was ordered that said bank deposite with the register of said court five thousand dollars of the aforesaid funds on or before the twelfth day of June then next, and that said register pay over the said sum to the said Christian Breithaupt, upon his giving to the said register a bond, with good security, conditioned to refund the same, with interest at six per cent. from the date of the loan, whenever said court should so order; which said sum of five thousand dollars was received by the said Christian Breithaupt, from the register of said court, on the thirteenth day of June, eighteen hundred and twenty-five.

On the sixth day of May, eighteen hundred and thirty, (being the first day of a regular term of the sixth circuit court of the United States for the district of Georgia,) the court caused an order to be made and entered, that it appearing to the court that the mandate of the Supreme Court of the United States was received, remanding the said case to said circuit court, it was ordered that the said mandate be filed, and the said case reinstated on the docket; by which said mandate of

the Supreme Court of the United States it was ordered and adjudged, by said Supreme Court, that the cause be remanded to the said circuit court, with directions to proceed therein according to law.

And on the eighth day of May, eighteen hundred and thirty, (it being a day of the regular term of the sixth circuit court of the United States for the district of Georgia,) the following was entered as the decree of said court:

"This cause came on to be heard on the amended bill, answers, exhibits, and evidence, and the court having considered the same, it is ordered and decreed that the sale of the Augusta bridge, made by virtue of certain powers of attorney and the consent of the parties, and held and conducted under the direction of commissioners heretofore appointed under this court, be and the same is hereby ratified and confirmed, and the said Bank of the State of Georgia vested with a full, absolute, and perfect title to the said bridge and its appurtenances, under the said sale, freed, acquitted, released, and discharged from all manner of liens, claims, or incumbrances, at law or in equity, on the part of the said Henry Shultz, John McKinne, Barna McKinne, Christian Breithaupt, or any other person or persons parties to the said bill of complaint.

"And it is further ordered and decreed by the court, by and with the consent of the parties, complainants and defendants, that the scrip issued by the Bank of the State of Georgia for the sum of seventy-one thousand six hundred and eighty-six dollars and thirty-six cents, and dated the fifteenth day of February, in the year of our Lord one thousand eight hundred and twenty-three, be cancelled and delivered up to the said bank by the clerk of this court; and that the bond of Christian Breithaupt, Alexander McKinzie, and Dimas Ponce, in the penal sum of ten thousand dollars, dated the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and twenty-five, and filed in the office of the clerk of this court, be cancelled; and that said bill of complaint, as to the several other matters therein contained, be dismissed with costs."

"We consent and agree that the foregoing decree be entered at the next or any succeeding term of the said circuit court U. S., district of Georgia.

(Signed,) GEO. McDUFFIE,
Sol'r for Complainants.

(Signed,) R. H. WILDE,
Sol'r for Defendants.

WASHINGTON, 10*th April*, 1830."

"The within decree having been drawn up, agreed to, and subscribed by the solicitors, on behalf of the parties, complainants and defendants, on motion of Mr. Wilde, ordered that the same be filed and entered as the decree of this court.

(Signed,) WILLIAM JOHNSON,
(Signed,) J. CUYLER.

Which said orders, decretal orders, hereinbefore set forth and referred to, together with all the testimony taken and published in said cause, form and are part and parcel of the proceedings in the investigation of said cause, and are of record and of file in this honorable court, and which these complainants pray may be taken, considered, and referred to as forming a portion of said cause, and that the said original bill, with all its amendments, the answers, decrees, decretal orders, and evidence, as hereinbefore stated or referred to by your orators, may be reinstated and revived, for the causes hereinafter set forth, to the extent of the several interests of the parties to this bill, so far as the same may be deemed by this honorable court, applicable to their several claims.

And your orators further shew, by way of supplement, unto your honors, that your orator Henry Shultz, under an act of the legislature of South Carolina, commonly called the insolvent debtors' act of said State, made and executed an assignment of all his estate, in trust for his creditors, to Thomas Harrison, treasurer of the upper division of the State of South Carolina, (the said Henry Shultz being at that time a citizen of said State of South Carolina,) on the thirteenth day of October, eighteen hundred and twenty-eight, amongst which estate, so assigned, was the interest of the said Henry Shultz in the Augusta bridge, in said original bill described and mentioned; that afterwards, in a case of John Stony and John Magrath, and others, against the said Henry Shultz and others, in the court of equity for Edgefield district, South Carolina, an order was passed appointing Ker Boyce and Thomas Harrison, trustees of your orator Henry Shultz, in place of the assignee aforesaid; that the said Thomas Harrison has departed this life, and the said Ker Boyce has been released and discharged by the court of equity for Edgefield district, in the State of South Carolina, from his trust, and your orator John W. Yarborough, appointed trustee in the place of the said Ker Boyce; and that your orator John W. Yarborough is now the only trustee in law and equity authorized to act under the said assignment of the said Henry Shultz, for the benefit of the creditors of said Shultz; and that the said bridge and its appurtenances being originally pledged, as copartnership property, by John McKinne and Henry Shultz, for the redemption of the bills issued by the said John McKinne and Henry Shultz, as charged in the original bill of complaint of Christian Briethaupt and Henry Shultz, in this honorable court, that the lien thus created has never been divested or impaired, by virtue of any act of the said Henry Shultz [and] Thomas Harrison, as assignees, or by Ker Boyce and Thomas Harrison, as trustees, or by either of them, during the continuance of such trust; and that no act or consent of your orator, John W. Yarborough, since his appointment to said trust, and that no act or consent of the said Henry Shultz, done or given subsequent to the date of the assignment made by him as an insolvent debtor, can impair the rights of the creditors of the said Henry Shultz, or the rights of the holders of Bridge bills, or of judgments founded on Bridge bills, against John McKinne and Henry Shultz; that if the mortgage executed by John McKinne and Barna McKinne,

the Supreme Court of the United States it was ordered and adjudged, by said Supreme Court, that the cause be remanded to the said circuit court, with directions to proceed therein according to law.

And on the eighth day of May, eighteen hundred and thirty, (it being a day of the regular term of the sixth circuit court of the United States for the district of Georgia,) the following was entered as the decree of said court:

"This cause came on to be heard on the amended bill, answers, exhibits, and evidence, and the court having considered the same, it is ordered and decreed that the sale of the Augusta bridge, made by virtue of certain powers of attorney and the consent of the parties, and held and conducted under the direction of commissioners heretofore appointed under this court, be and the same is hereby ratified and confirmed, and the said Bank of the State of Georgia vested with a full, absolute, and perfect title to the said bridge and its appurtenances, under the said sale, freed, acquitted, released, and discharged from all manner of liens, claims, or incumbrances, at law or in equity, on the part of the said Henry Shultz, John McKinne, Barna McKinne, Christian Breithaupt, or any other person or persons parties to the said bill of complaint.

"And it is further ordered and decreed by the court, by and with the consent of the parties, complainants and defendants, that the scrip issued by the Bank of the State of Georgia for the sum of seventy-one thousand six hundred and eighty-six dollars and thirty-six cents, and dated the fifteenth day of February, in the year of our Lord one thousand eight hundred and twenty-three, be cancelled and delivered up to the said bank by the clerk of this court; and that the bond of Christian Breithaupt, Alexander McKinzie, and Dimas Ponce, in the penal sum of ten thousand dollars, dated the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and twenty-five, and filed in the office of the clerk of this court, be cancelled; and that said bill of complaint, as to the several other matters therein contained, be dismissed with costs."

"We consent and agree that the foregoing decree be entered at the next or any succeeding term of the said circuit court U. S., district of Georgia.

(Signed,) GEO. McDUFFIE,
Sol'r for Complainants.

(Signed,) R. H. WILDE,
Sol'r for Defendants.

WASHINGTON, 10*th April*, 1830."

"The within decree having been drawn up, agreed to, and subscribed by the solicitors, on behalf of the parties, complainants and defendants, on motion of Mr. Wilde, ordered that the same be filed and entered as the decree of this court.

(Signed,) WILLIAM JOHNSON,
(Signed,) J. CUYLER.

Which said orders, decretal orders, hereinbefore set forth and referred to, together with all the testimony taken and published in said cause, form and are part and parcel of the proceedings in the investigation of said cause, and are of record and of file in this honorable court, and which these complainants pray may be taken, considered, and referred to as forming a portion of said cause, and that the said original bill, with all its amendments, the answers, decrees, decretal orders, and evidence, as hereinbefore stated or referred to by your orators, may be reinstated and revived, for the causes hereinafter set forth, to the extent of the several interests of the parties to this bill, so far as the same may be deemed by this honorable court, applicable to their several claims.

And your orators further shew, by way of supplement, unto your honors, that your orator Henry Shultz, under an act of the legislature of South Carolina, commonly called the insolvent debtors' act of said State, made and executed an assignment of all his estate, in trust for his creditors, to Thomas Harrison, treasurer of the upper division of the State of South Carolina, (the said Henry Shultz being at that time a citizen of said State of South Carolina,) on the thirteenth day of October, eighteen hundred and twenty-eight, amongst which estate, so assigned, was the interest of the said Henry Shultz in the Augusta bridge, in said original bill described and mentioned; that afterwards, in a case of John Stony and John Magrath, and others, against the said Henry Shultz and others, in the court of equity for Edgefield district, South Carolina, an order was passed appointing Ker Boyce and Thomas Harrison, trustees of your orator Henry Shultz, in place of the assignee aforesaid; that the said Thomas Harrison has departed this life, and the said Ker Boyce has been released and discharged by the court of equity for Edgefield district, in the State of South Carolina, from his trust, and your orator John W. Yarborough, appointed trustee in the place of the said Ker Boyce; and that your orator John W. Yarborough is now the only trustee in law and equity authorized to act under the said assignment of the said Henry Shultz, for the benefit of the creditors of said Shultz; and that the said bridge and its appurtenances being originally pledged, as copartnership property, by John McKinne and Henry Shultz, for the redemption of the bills issued by the said John McKinne and Henry Shultz, as charged in the original bill of complaint of Christian Briethaupt and Henry Shultz, in this honorable court, that the lien thus created has never been divested or impaired, by virtue of any act of the said Henry Shultz [and] Thomas Harrison, as assignees, or by Ker Boyce and Thomas Harrison, as trustees, or by either of them, during the continuance of such trust; and that no act or consent of your orator, John W. Yarborough, since his appointment to said trust, and that no act or consent of the said Henry Shultz, done or given subsequent to the date of the assignment made by him as an insolvent debtor, can impair the rights of the creditors of the said Henry Shultz, or the rights of the holders of Bridge bills, or of judgments founded on Bridge bills, against John McKinne and Henry Shultz; that if the mortgage executed by John McKinne and Barna McKinne,

to the Bank of the State of Georgia, as stated in the original bill, be not null and void, under the act of the legislature of the State of Georgia, as your orators charge it to be, your orators contend that the said bank and all claiming under it occupy the ground of mortgagees in possession, and are bound to account for the rents and profits of said bridge, as the same has never been sold under the foreclosure of said mortgage; and if the said mortgage is held to be void, that the said bank and all others claiming under it are bound to surrender up the said bridge, and account for the profits thereof, during the time which has elapsed since the possession was taken by said bank. That in this view of the case, the said bridge, and its entire income and profits, your orators contend, are, first, liable to the redemption of Bridge bills and judgments founded thereon, and after these are paid one half of the surplus becomes liable in the hands of your orator, John W. Yarborough, as trustee as aforesaid, to satisfy the creditors of your orator Henry Shultz, and the balance will become the property of your orator Henry Shultz, and the remaining half, after the satisfaction of Bridge bills, and all claims originating thereon, will become the property of the other member of the Bridge company.

Your orator from authentic sources of evidence have computed the income of said bridge, with simple interest at six per cent. per annum, from the time the Bank of the State of Georgia acquired possession, at the sum of about five hundred and ninety-five thousand dollars, and at seven per cent. per annum, to about the sum of six hundred and thirty-five thousand dollars.

Your orators are informed that the said Bank of the State of Georgia, on the fourth day of May, in the year eighteen hundred and thirty-eight, conveyed all its interest in said bridge and its appurtenances to the said Gazaway B. Lamar, for the sum of seventy thousand dollars, by a quit-claim deed without warranty of title, with a full knowledge at the time, on the part of said Lamar, of all the incumbrances and claims on the same, and with a perfect knowledge of the absence of title in the Bank of the State of Georgia to said property; and that the said Lamar possessed said bridge and its appurtenances, and received the income and profits thereof, from the fourth day of May, eighteen hundred and thirty-eight, until the twenty-first day of January, eighteen hundred and forty, and on that day conveyed his interest in the said bridge and its appurtenances to the City Council of Augusta, in the State of Georgia, for the sum of one hundred thousand dollars by quit-claim deed, without warranty of title; and that at the time of the said sale by the said Lamar and purchase by the City Council of Augusta, that the said City Council of Augusta, through its mayor and members, had full knowledge of the incumbrances and claims of your orators on said bridge and its appurtenances, and became the purchasers of the same with such knowledge, and that the said City Council of Augusta has continued to hold the possession and receive the profits of said bridge from the time of the said purchase from Lamar. Your orators further shew that the legislature of the State of Georgia, by an act passed on the twenty-third day

of December, eighteen hundred and forty, extending the charter of said bridge to the City Council of Augusta, expressly by a *proviso* to said act, reserves the rights of all other persons to the said bridge.

Your orator, John W. Yarborough, trustee for Henry Shultz, states, that under a decree in the case of John W. Stony and John Magrath, and others, against Henry Shultz and others, in the court of equity for Edgefield district, in the State of South Carolina, that the proceeds of the sales of the property of the said Henry Shultz, to the amount of about seventy thousand dollars, was appropriated to the payment of Bridge bills and judgments obtained on Bridge bills, and that the unsatisfied creditors of the said Henry Shultz have the equity of now requiring a like amount of the copartnership property of the Bridge company to be applied to the payment of their individual claims against the said Henry Shultz, with their legal interest on the same; and your orator, Henry Shultz, sheweth that he has heretofore paid and advanced, of his own private means, for the redemption of Bridge bills, large divers sums of money, amounting in the aggregate to about the sum of one hundred and fifty-three thousand two hundred and ninety-six dollars and forty-one cents, to wit, the sum of fourteen thousand seven hundred and fifty dollars in cash, on the twenty-fifth day of May, eighteen hundred and nineteen, to the Bridge Bank, to pay off in part, the individual depositors in said bank after the same had stopped payment of its bills; the sum of sixty thousand four hundred and fifty dollars, in good notes, deposited with William Jones at the Branch of the Bank of the State of Georgia, at Augusta, on the thirty-first day of May, eighteen hundred and nineteen, to pay off Bridge bills; cash advanced to pay off Bridge bills after the bank had stopped payment, about the twenty-sixth day of May, eighteen hundred and nineteen, the sum of twenty-eight thousand six hundred and sixteen dollars and ninety-two cents; in Bridge bills, placed in the hands of Samuel Hale, President of the Branch Bank of the State of Georgia, in Augusta, on the twenty-ninth day of September, eighteen hundred and twenty-nine, thirteen thousand eight hundred and seventy two dollars; and in the year eighteen hundred and thirty-six, cash paid out of the proceeds of the sale of your orator's property and effects, which had been assigned to Thomas Harrison, and afterwards sold and collected by Ker Boyce and Thomas Harrison, trustees, and paid out under and by virtue of a decree of the court of equity for Edgefield district, South Carolina, on judgments founded on Bridge bills, the sum of thirty-five thousand six hundred and seven dollars and forty-nine cents; the simple interest on which said several sums advanced and paid by your orator, Henry Shultz, at eight per cent. per annum, will amount to the sum of two hundred and seventy thousand four hundred and thirty dollars, which, added to the principal sums as aforesaid paid by your orator, and out of his individual means, together, make the sum of four hundred and twenty-three thousand six hundred and twenty-six dollars and forty-one cents; which sum is subject in equity to a credit of ten thousand dollars, handed to your orator, Henry Shultz, by Samuel Hale, President of the Branch of the Bank of

the Bank of the State of Georgia, at Augusta, on the fifteenth day of September, eighteen hundred and twenty-nine; and the sum of twelve thousand eight hundred dollars, the interest on the same at eight per cent. per annum, from the time the same was received by your orator from the said Samuel Hale, which will leave a balance due to your orator, Henry Shultz, for and on account of advances and payments made by him, out of his individual means, for the redemption of Bridge bills, about the sum of four hundred thousand eight hundred and twenty-six dollars; which sum he insists he is in equity entitled to receive, next after the redemption of the outstanding and unredeemed Bridge bills, or unsatisfied judgments thereon, and the reimbursing to John W. Yarborough, the trustee as hereinbefore stated, before the payment *of* over of any portion of the sums due to your orators from the said defendants, or any of them. And your orator, Henry Shultz, states, that from the most accurate information in his power, that there is still unredeemed and outstanding of Bridge bills, issued by John McKinne and your orator, Henry Shultz, as proprietors of said Bridge and Bridge Bank, about the sum of ninety-two thousand two hundred and sixty-three dollars thirty-one and one-fourth cents, including all such as may have been lost or destroyed. And your orators further shew unto your honors, that they are advised and believe, that the decree as entered by this honorable court on said original bill is void, as to all the parties to the said original bill, except so much thereof as relates to the claims of Christian Breithaupt, as the solicitor, who originally represented the complainants in said original bill, did not, at the time he consented to said decree, represent the interest of the creditors of the said Henry Shultz; that he had no power or authority at the time to represent any other interest in said cause than that of said Breithaupt; and that no act or consent of the complainants' solicitor could, in any manner, affect or impair the rights of the creditors of Henry Shultz, as all his interest in the subject matter in said cause had, before the consent given to said decree by said solicitor, passed out of him by virtue of his deed of assignment, and vested beneficially in his creditors; and that neither the assignees or the creditors, or either of them, had granted or given any power or authority to the said solicitor of Henry Shultz and Christian Breithaupt, to represent him, or them, or any, or either of them, in said cause; therefore, any consent given by the solicitor, so far as the interest of the creditors of said Henry Shultz and of the Bridge Company were concerned, was without authority, and operated as a fraud on said creditors, and wholly void, and cannot in equity be binding and obligatory.

And your orators shew unto your honors, that they are informed and believe, and so they charge, that the sale of said bridge and its appurtenances, as made by Christopher Fitzsimmons and Freeman Walker, commissioners, appointed by a decretal order of this honorable court, was and is void, because one of the parties to the original bill, John McKinne, and who was a joint proprietor with your orator, Henry Shultz, of said bridge and its appurtenances, never consented to, or executed any power or authority to the said commissioners to make said

sale, or to execute any title to the purchaser for the same; and the said bridge and appurtenances being copartnership property of the said John McKinne and your orator, Henry Shultz, and by them specifically pledged and set apart for the redemption of the Bridge bills, (as stated in the original bill,) the interest therein could not be severed without impairing the rights of the creditors of the said Bridge Company; and the said sale being void as to the interest of the said John McKinne, renders it void in toto; and therefore no legal or equitable title to the same has ever vested in the Bank of the State of Georgia, or any holding possession under it. And the original possession of said bridge by the Bank of the State of Georgia being tortious and forcible, that the said Bank, and all those who have held and are now holding under it, are in equity and good conscience bound to account for the income and profits of the same, for the several periods of time for which each have held and enjoyed the possession of the same; and as your orators believe and charge, the nett profits of said bridge from the time your orator, Henry Shultz, was forcibly dispossessed thereof, (as charged in the original bill,) was equal annually, and for each and every year, the sum of fifteen thousand dollars over and above all expenses necessarily incurred in and about the keeping up the same; and your orators submit to this honorable court, that if the sale of the said bridge, as made by Freeman Walker and Christopher Fitzsimmons, commissioners, to the Bank of the State of Georgia, should be held valid; that the said Bank is bound to account to your orators for the amount of the purchase money, and six per cent. interest thereon, and also for the nett amount of the tolls received at said bridge from the third day of March, eighteen hundred and twenty-one, to the tenth day of December, eighteen hundred and twenty-two, with eight per cent. interest thereon; that repeated but unsuccessful efforts have been made to induce the said Bank of the State of Georgia, the said Gazaway B. Lamar, and the said City Council of Augusta, to deliver said bridge, and account for the income and profits thereof; but all of which they have heretofore refused and neglected.

In tender consideration whereof, and for as much as such matters are properly cognizable in this honorable court, where alone the claims of orators can be fairly and justly adjusted. To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief prayed for, and may upon their several and respective corporal oaths, (and the said Bank of the State of Georgia and the City Council of Augusta, under their respective corporate seals,) and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories, hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether the said John McKinne and Henry Shultz did not form a partnership in the business of banking, on or about the first day of July, eighteen hundred and sixteen, or at what time; and was or was

not the said firm notoriously known and called by the name of the Bridge Company of Augusta?

2. Whether the said John McKinne and Henry Shultz were not the sole joint owners and proprietors of the bridge across the Savannah river opposite the city of Augusta at the time said partnership was entered into between them; and whether or not it was agreed, by and between them, at the time of entering into said partnership, that said bridge should, with other property, constitute a partnership fund, which neither should have power to alienate for his individual debts?

3. Whether the said bridge and its appurtenances was not to be kept and held liable for the redemption of all bills issued or to be issued by the said company, in exclusion of the private debts of either of the partners?

4. Whether the said bridge was not entered on the books of the Bridge Company as co-partnership property, and as part of the banking capital of said Bridge Company; and whether same was not so entered at the valuation of seventy-five thousand dollars, or at what other amount?

5. Whether the bills of said company were not drawn payable to bearer, and signed by John McKinne and Henry Shultz, proprietors; whether all the bills issued and circulated by said company were not stamped on their face with a representation of said bridge, and did they not circulate as other current bank bills or money; and was not the fact notorious and publicly known that the bridge was partnership property, and responsible for the payment of the bills issued by the said Bridge Company?

6. Whether the Bridge Company or Bridge Bank did not stop payment of its bills on the twenty-fourth day of May, eighteen hundred and nineteen, or at what time; and whether Henry Shultz did not on that day publicly assume his place as one of the proprietors of said Banking Company in place of Barna McKinne, and proclaim his own liability and the liability of the said bridge and all the other partnership property of said company, for the speedy redemption of all the outstanding bills of said company?

7. Whether John McKinne and Barna McKinne did not, on the tenth day of June, eighteen hundred and nineteen, execute a mortgage to the Bank of the State of Georgia on said bridge and its appurtenances, to secure the payment of the sum of ninety thousand dollars of the individual debts of John McKinne and of John McKinne and James Lamkin, or what other debts was said mortgage made to secure?

8. Whether any, and if any, what other property was included in said mortgage; and were not John McKinne and Barna McKinne, both or one, and which of them, insolvent, or in failing circumstances at the time of the execution of said mortgage?

9. Whether said mortgage has ever been foreclosed, and when and where, on said bridge, for what sum foreclosed; and whether the said bridge has been levied on and sold under the foreclosure of said mort-

gage; and when and where, and to whom, and for what sum, and who received the proceeds of the sale of said bridge?

10. Whether the Bank of the State of Georgia ever has had any title to said bridge under the foreclosure of the said mortgage; and whether said mortgage was not null and void, under the law of the State of Georgia, because the execution of said mortgage was an attempt to prefer one creditor in exclusion of others by persons in failing circumstances, and because it was an attempt to make partnership property, which had been specially pledged for the redemption of bridge bills, liable for the private debts of one of the partners?

11. Whether the sheriff of Richmond county, on the third day of March, eighteen hundred and twenty-one, did not forcibly dispossess and eject your orator, Henry Shultz, from the said bridge, and take possession thereof; and whether the said sheriff was not aided, directed, and assisted, in said act, by the president of the Branch of the Bank of the State of Georgia and the attorney of said bank, in ousting said Shultz of the possession of said bridge; and whether said bridge had before that time been sold under the foreclosure of said mortgage, or under any other, and what other legal process?

12. Whether the Bank of the State of Georgia, either by itself or its agents, or others pretending to claim under said bank, has or have not remained in the possession of the said bridge, and has or have not continued so to do, and received the tolls and profits thereof from thence hitherto?

13. Whether the Bank of the State of Georgia did not receive the tolls of said bridge from the third day of March, eighteen hundred and twenty-one, to the tenth day of December, eighteen hundred and twenty-two, and what was the whole sum received as tolls at said bridge within that period, and what the amount of expenses and charges incident to the same for the same period, and what the amount of the nett income from the tolls of said bridge for the same time; and has the said nett sum been disposed of and applied?

14. Whether the said bridge was not sold on the tenth day of December, eighteen hundred and twenty-two, by commissioners; whether said commissioners made said sale with the consent and under a power from all the parties to the suit then pending, in which the order of sale was granted; if all the parties to said cause did not consent to said sale; which refused or omitted to consent to or authorize said sale; and what and whose interest was sold?

15. Whether the Bank of the State of Georgia did not become the purchaser of said bridge at said sale; for what sum; how was the purchase-money paid or secured; to whom and when paid, and to whose account credited; and was the same applied, or any portion of it, to the extinguishment of the mortgage debt hereinbefore mentioned, and how much thereof?

16. Whether the Bank of the State of Georgia, by itself or its agents and servants, did not continue in the possession of said bridge, and receive all the profits and tolls at the same from the tenth day of December, eighteen hundred and twenty-two, until the fourth day of May,

eighteen hundred and thirty-eight; and what was the amount of the income or toll of said bridge for said period of time; how much for each month, and how much for each year, within that period of time; and what the amount of expenses annually and for each year, within said period of time, for keeping up said bridge and collecting the tolls at the same; and how and in what manner have the nett proceeds of said tolls been applied?

17. Whether the Bank of the State of Georgia did not, on the fourth day of May, eighteen hundred and thirty-eight, convey its interest in said bridge to Gazaway B. Lamar, for the sum of seventy thousand dollars, or some other, and what sum; and whether the said Lamar was not fully acquainted, at the time of said purchase, with [the] nature and extent of the claim of title which the Bank of the State of Georgia professed to hold to said bridge, and did he not become the purchaser with such knowledge and description of title to said bridge; did the said bank execute to the said Lamar, was it a warranty deed or a quit-claim only, or what, *over* conveyance?

18. Whether the said Lamar did not possess said bridge, and receive the income and profits thereof, from the fourth day of May, eighteen hundred and thirty-eight, until the twenty-first day of January, eighteen hundred and forty; and what was the entire income, and the monthly income, for each month within said period of time of said bridge; what the expenses during said time; and what the nett income or amount of tolls for the time he possessed the same?

19. Whether the said Gazaway B. Lamar did not, on the twenty-first day of January, eighteen hundred and forty, convey his interest in the said bridge to the city council of Augusta, in the State of Georgia, for the sum of one hundred thousand dollars by quit-claim deed, and without warranty of title; and whether the said City Council of Augusta, as a corporation, through its mayor and members, had not at the time of purchase from said Lamar full knowledge of the extent of the title of said Lamar, and of the extent of the title as made by the Bank of the State of Georgia to said Lamar, and notice of the incumbrance held over said bridge by your orators, or one, and which of them; and was not said purchase made with such full knowledge?

20. Whether the said City Council of Augusta did not and has not possessed said bridge, and received the income and profits arising from the same, from the twenty-first day of January, eighteen hundred and forty, continuedly, to the present time; what sum has been received for toll at said bridge; what sum in each month and year; and what sum or sums has or have been expended in keeping up said bridge, and when and for what expended; and what has been the nett income from said bridge for each and every year, and up to the time of answering this interrogatory?

21. Whether the Bank of the State of Georgia has not been paid the debts of John McKinne, and James Lampkin, the payment of which were intended to be secured by said mortgage, or some, and what portion of said debts have been paid; when, by whom, and how much has been paid; and has or has not John McKinne been released from all

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liability for or on account of any and all of said demands by the Bank of the State of Georgia; and when and [what] was the consideration of such settlement and discharge of said McKinne? And set forth a copy of such settlement, discharge, and release.

22. Whether Henry Shultz did not take the benefit of the insolvent laws of the State of South Carolina at the time and under the circumstances as stated in this bill; whether he did not execute such deed of assignment, as in said bill mentioned, to Thomas Harrison, for all his property, rights, and credits, as in said bill stated; and whether the said bridge and its appurtenances was not included in said deed of assignment; and were or were not all these facts known to the Bank of the State of Georgia, to John McKinne, Gazaway B. Lamar, and the City Council of Augusta, Georgia, or to which of them, at the time, or at what other time or times, and at what time, to each of said defendants?

23. Whether Ker Boyce and Thomas Harrison were not appointed trustees, as charged in said bill, and for the purposes as therein stated, in place of the said assignee, or for what other object or purpose?

24. Whether your orator, John W. Yarborough, was not appointed trustee, as in said bill stated, in place of Ker Boyce, was the survivor of Ker Boyce and Thomas Harrison, and whether [he] is not still such trustee, and authorized to represent the interests of the creditors of said Shultz?

25. Whether such proceedings have not heretofore been had in the circuit court of the United States, for the district of Georgia, and in the Supreme Court of the United States, in the original cause, as herein before in this bill stated; or if any other, what other?

26. Whether the decree as entered in the circuit court of the United States, for the district of Georgia, in said original cause, on the eighth day of May, eighteen hundred and thirty, is in accordance with the mandate of the Supreme Court of the United States; whether the same was by and with the consent of all parties immediately interested in subject matter in controversy in said cause; whether the assignee of Henry Shultz, or the creditors of the Bridge company, were represented by any solicitor, agent, or attorney in said cause, authorized to consent to said decree; and whether said decree does not operate as a fraud upon the creditors of the Bridge company, the creditors of Henry Shultz, and upon Henry Shultz himself; and whether said decree ought not to be examined into, reviewed, and reversed?

And your orators pray your honors, that the original bill, with all the proceedings had thereon in this honorable court, may stand and be revived, and be placed in the same plight and condition in which the same was before the decree was entered, as by consent, on the eighth day of May, eighteen hundred and thirty; that the said decree may be opened, inquired into, reviewed, set aside, and reversed; that the mortgage from John McKinne and Barna McKinne, to the Bank of the State of Georgia, on said bridge, may be declared null and void; that the sale of said bridge, made by Christopher Fitzsimmons and Freeman Walker, commissioners, may be set aside and declared void; that the Bank of

the State of Georgia, Gazaway B. Lamar, and the City Council of Augusta, be severally decreed and ordered to render a full and correct account of the nett income of said bridge for the periods of time they severally had possession of the same; and that they, each and severally, be decreed to pay to your orators the said several sums which each have received, with such interest thereon as is customary, usual, and right, in the courts of the United States; and that the said City Council of Augusta be ordered and decreed to deliver over to your orators the full, quiet, and peaceable possession of the said bridge, with all its appurtenances, and that the transfers of said bridge, by the Bank of the State of Georgia, to Gazaway B. Lamar, and by the said Lamar to the City Council of Augusta, may be decreed void and null, and set aside; or, otherwise, should the sale by said commissioners be decreed and held valid by this honorable court, then that the said Bank of the State of Georgia be ordered and decreed to pay to your orators the amount of the purchase money for which said bridge sold, with interest thereon, at six per cent. per annum, from the time of said sale and purchase, and also the nett amount of the tolls received at said bridge, from the third day of March, eighteen hundred and twenty-one, until the tenth day of December, eighteen hundred and twenty-two, with interest thereon at eight per cent. per annum; or should the said mortgage on said bridge be held valid and binding, that then your honors will order an account to be taken of payments which have been made and which should be applied to the extinguishment of said mortgage lien, and also an account of the income and profits of said bridge, from the time the same passed into the possession of the Bank of the State of Georgia; and that if any sums should appear due on said mortgage, that an equal sum be taken from the income of the bridge, and applied to the entire and final satisfaction of whatever balance may be found due on said mortgage, and that said bridge stand redeemed from said mortgage incumbrance; and that whatever balance of the income and profits of said bridge may, after said final payment of the mortgage lien, appear to be in the possession of the Bank of the State of Georgia, said Lamar and the City Council of Augusta, they may be severally ordered and decreed to pay with interest; and that from thenceforth the possession of the said bridge be decreed to your orators, unincumbered and freed from all claims of the said Bank of the State of Georgia, Gazaway B. Lamar and the City Council of Augusta, and all claiming under any or either of them; that whatever fund may be found to be due from each of the defendants respectively, may be ordered and disposed of by this honorable court according to the rights of the parties in interest consonant with the principles of equity and justice, and that your honors will grant such other and further relief in the premises as to your honors may seem meet and proper; may it please your honors to grant unto your orators the writ of subpœna to require the said the Bank of the State of Georgia and the City Council of Augusta, by their attorneys, and the said John McKinne and Gazaway B. Lamar, in their proper persons, to appear and answer according to the rules and

practice of this honorable court; and as in duty bound your orators will ever pray, &c.

WM. Y. HANSELL,
WM. & WM. F. LAW,
Solicitors for the complainants.

Note.

The defendants, the Bank of the State of Georgia, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26.

The defendant, John McKinne, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 10, 14, 21, 22, 23, 24, 25 and 26.

The defendant, Gazaway B. Lamar, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 17, 18, 19, 22, 23, 24, 25 and 26.

The defendant, the City Council of Augusta, is required to answer the interrogatories numbered respectively 2, 3, 5, 6, 7, 9, 10, 11, 12, 14, 19, 20, 22, 23, 24, 25, 26.

Original bill filed 19th May, 1845.

GEO. GLEN, *Clerk.*

At rules, Monday, June 3d, 1845.

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants,
and
THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants. } In equity.

And now, at June rules, 1845, comes the defendant, the City Council of Augusta, by their solicitor, Andrew J. Miller, and enters its appearance in the above cause.

At July rules, 1845.

THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants,
ads.
JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants. } In equity.

And now, at July rules, 1845, comes the defendant, the Bank of the State of Georgia, by its solicitors, McAllister & Cohen, and enter its appearance in the above cause.

THE SAME,
ads.
THE SAME. } In equity.

And now, at July rules, 1845, comes the defendant, John McKinne,

by his solicitor, Andrew J. Miller, and enters his appearance in the above case.

ANDREW J. MILLER.

July 7, 1845.

At rules, Monday, August 4th, 1845.

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants, and THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants. } In equity.

The defendant, Gazaway B. Lamar, having failed to enter his appearance or to file his plea, demurrer, or answer to the complainants' bill, as prescribed by the rules of court, on motion of the complainants' solicitors, it is ordered that the said bill of complaint be taken pro confesso as against the said Gazaway B. Lamar, and that as against him the said cause shall be proceeded ex parte.

WM. Y. HANSELL,
WM. & WM. F. LAW,
Solicitors for compl'ts.

At rules, Monday, September 1st, 1845.

6th circuit court U. S., district of Georgia, Sept'r rules, 1845.

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants, and THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants. } In equity.

On motion of Thomas E. Lloyd, solicitor for Gazaway B. Lamar, it is ordered that the complainants do shew cause, at the next rules day, why the order entered that the above bill of complaint be taken pro confesso as against the said Gazaway B. Lamar, should not be set aside and leave granted the said Gazaway B. Lamar to enter his appearance, and plead demur or answer to said bill.

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants, and THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, [defendants.] } In equity.

In the sixth circuit court of the United States, for the district of Georgia.

On motion of Thomas E. Lloyd, solicitor for Gazaway B. Lamar,

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one of the defendants, it is ordered, with the consent of the complainants' solicitors, that the order entered at rules, August, 1845, that the above bill of complaint be taken pro confesso against the said Gazaway B. Lamar be set aside, and leave be granted to the said Gazaway B. Lamar, to enter his appearance and plead demur or answer to said bill.

Nov. 8th, 1845.

JOHN W. YARBOROUGH, trustee, and others,
vs.
THE BANK OF THE STATE OF GEORGIA, and others. } In equity.

In the sixth circuit court of the U. S. for the district of Georgia.

These defendants, by protestation, not confessing all or any of the matters and things in said complainants' bill contained to be true, in such manner and form as the same are therein set forth and alleged, do demur to said bill, and for cause of demurrer shew, that the said complainants have not, by their said bill, made such a case as entitles them *to* a court of equity to any discovery from these defendants respectively, or any, or either of them, or any relief against them, or either of them, as to the matters contained in the said bill, or any of such matters; and that any discovery which can be made by these defendants, or either of them, touching the matters complained of [in] the said bill, or any, or either of them, cannot be of any avail to the said complainants, for the purposes for which a discovery is sought against these defendants by the said bill, nor entitle the said complainants to any relief in this court touching any of the matters therein complained of.

Wherefore, and for divers other good causes of demurrer, appearing in the said bill, these defendants do demur thereto; and they pray the judgment of this honorable court, whether they shall be compelled to make any further or other answer to the said bill; and they humbly pray to be dismissed from hence, with their reasonable costs in this behalf sustained.

McALLISTER & COHEN,
PETIGRU & LESESNE,
ANDREW J. MILLER,
Defendants' Solicitors.

We appear for the defendants, and certify, that in our opinion the demurrer is well founded in point of law.

PETIGRU & LESESNE,
ANDREW J. MILLER,
McALLISTER & COHEN,
Defendants' Solicitors.

STATE OF GEORGIA, *Richmond county:*

Personally appeared Martin M. Dye, mayor of the city of Augusta, and in behalf of the City Council of Augusta, defendants named in the

above stated bill of complaint, being duly sworn, deposeth and saith, that the foregoing demurrer is not interposed for delay.

MARTIN M. DYE.

Sworn to before me, and subscribed this 26th July, 1845.

JAMES HARPER,
Justice of the inferior court of Richmond county.

UNITED STATES OF AMERICA, *district of Georgia:*

Personally appeared William Thorne Williams, President pro tempor of the Bank of the State of Georgia, who, being duly sworn, says, that the foregoing demurrer is not interposed for delay.

W. THORNE WILLIAMS,
President pro tem.

Sworn to and subscribed before me, this 30th July, 1845.

JNO. C. NICOLL,
Dist. Judge.

Filed at rules, August 4th, 1845.

G. GLEN, *Clerk.*

JOHN W. YARBOROUGH, trustee, and Henry Shultz, complainants,
vs.
THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants. } In equity.

In the sixth circuit court of the United States, for the district of Georgia.

The defendant, Gazaway B. Lamar, by protestation, not confessing all or any of the matters and things in said complainants' bill contained to be true, in such manner and form as the same are therein set forth and alleged, doth demur to said bill, and for cause of demurrer sheweth, that the said complainants have not by their said bill made out such a case as entitles them in a court of equity to any discovery from these defendants respectively, or any, or either of them, or any relief against them, or any, or either of them, as to the matters contained in the said bill, or any of such matters; and that any discovery which can be made by these defendants, or any, or either of them, touching the matters complained of in the said bill, can not be of any avail to the said complainants for any of the purposes for which a discovery is sought against these defendants by the said bill, nor entitle the said complainants to any relief in this honorable court touching any of the matters therein complained of. Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto, and prays the judgment of this honorable court, whether he shall be compelled to make any other or further answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

THOS. E. LLOYD,
Sol. pro G. B. Lamar.

I appear for the defendant, Gazaway B. Lamar, and certify, that in my opinion this demurrer is well founded in point of law.

THOS. E. LLOYD,
Solicitor.

UNITED STATES OF AMERICA, *district of Georgia:*

Personally appeared Gazaway B. Lamar, who, being duly sworn, saith, that the foregoing demurrer is not interposed for delay.

G. B. LAMAR.

Affirmed to and subscribed before me, this 6th day of September, 1845.

GEO. W. MORTON,
Dep'y clerk, and U. S. commiss'r circuit court, U. S.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, James W. Metcalf, clerk of the district court of the United States of America, for the southern district of New York, do hereby certify, that I am well acquainted with the handwriting of George W. Morton, whose name is subscribed to the annexed affidavits, and that the signature to the same is in his proper handwriting. And I do further certify, that he was, at the time of signing the same, deputy clerk of said court, and a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this sixth day of Septem-
[L. S.] ber, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of these United States, the seventieth.

J. W. METCALF, *Clerk.*

Filed at rules, Oct. 6, 1845.

GEO. GLEN, *Clerk.*

At rules, Monday, October 6, 1845.

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants,
and
THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants. } In equity.

In the 6th circuit court of the U. S. for the district of Georgia, October rules, 1845.

On motion of W. & W. F. Law and Wm. Y. Hansell, solicitors for complainants, by Henry K. Preston, it is ordered that, in case Gazaway B. Lamar receive leave of the court to demur, plead, or answer to the said bill of complaint, that the said bill and answers shall come to a plenary hearing at the next term of this court to be holden at Milledge-

ville in November next, or at such other time as may be agreed upon between the solicitors of the parties respectively. And it is further ordered that the other defendants in the abovementioned case be heard at the same time with the above.

WM. & WM. F. LAW,
WM. Y. HANSELL,
By H. K. PRESTON,
Solicitors for Complainants.

In the 6th circuit court of the U. S. for the district of Georgia, November term, 1845.

JOHN W. YARBOROUGH and Henry Shultz, complainants, and THE BANK OF THE STATE OF GEORGIA and others, defendants. } In equity.

The demurrer in the foregoing case having been set down for argument at this term of the court, upon motion and by consent of the solicitors for the complainants and the defendants, it is ordered that the said demurrers be set down and stand for argument at the next term of this court in April next, in the city of Savannah.

MILLEDGEVILLE, 10*th Nov.*, 1845.

Petition of complainants to amend bill.

United States of America, to the honorable the judges of the sixth circuit court of the United States for the district of Georgia.

The petition of John W. Yarborough, of the town of Hamburg, in the State of South Carolina, and who is trustee of Henry Shultz, an insolvent debtor, and for the creditors of Henry Shultz, and Henry Shultz, of the town of Hamburg, in the State of South Carolina, and a citizen of the State of South Carolina, respectfully sheweth, that your petitioners filed their bill of complaint in this honorable court, returnable to the rules in July, eighteen hundred and forty-five, against the Bank of the State of Georgia, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, as defendants in said bill named; that all of the said defendants appeared to the said bill; that the said demurrers have been set down for argument, and the sixth day of July next appointed for the argument of the same. And your petitioners further shew, that they have since been advised to amend their said bill by introducing into said bill, as essential and material allegations, the proceedings of the Supreme Court of the United States, at January term of that court, eighteen hundred and twenty-eight, in the case of Christian Breithaupt and Henry Shultz, complainants below, vs. the Bank of the State of Georgia and others, with proper charges and allegations. Your petitioners pray your honors that they may have leave to amend their said bill as they shall be advised, upon such terms as to your honors shall seem meet, and agreeably to equity and justice and the practice of said court.

And your petitioners will ever pray, &c.

WM. & WM. F. LAW, *Solicitors for Pet'rs.*

Personally appeared Henry Shultz and John W. Yarborough, who, being each separately duly sworn, depose and say, that the foregoing petition and application to amend their bill is not made for the purpose of vexation or delay; that the matter of the proposed amendment, as they are advised and believe, is material; that they have so recently discovered the omission, and been advised of its materiality, that the same could not with reasonable diligence have been sooner introduced into the bill; that so far from seeking delay by the amendment proposed, it being introduced into the bill, they will be ready and desirous to argue the demurrers on the day on which they are now set down.

HENRY SHULTZ,
JOHN W. YARBOROUGH.

Sworn to before me, and subscribed this 13th May, 1846, at Richmond county, in the district of Georgia.

WM. W. HOLT,
U. S. Commissioner for the said county and district.

Filed, May 16th, 1846.

G. GLEN, *Clerk.*

At rules, June 1st, 1846.

JOHN W. YARBOROUGH and Henry Shultz,
vs.
THE BANK OF THE STATE OF GEORGIA et al. } In equity.

On reading the foregoing petition of John W. Yarborough and Henry Shultz, complainants, for leave to amend their bill filed against the Bank of the State of Georgia, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants, it is ordered that the said complainants have leave to amend their said bill as prayed for, on or before the next succeeding rule day, and that a copy of said amendment be served on each of the defendants.

JOHN C. NICOLL, *District Judge.*

SAVANNAH, *June 1st*, 1846.

Notice of complainants to solicitors for defendants of application for leave to amend bill.

In the 6th circuit court of the U. S., district of Georgia.

JOHN W. YARBOROUGH and Henry Shultz, complainants,
and
THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants. } In equity.

To Messrs. McALLISTER & COHEN, Petigru & Lessene, Andrew J. Miller, and Thomas E. Lloyd, esquires, solicitors for the defendants.

GENTLEMEN: Be pleased to take notice, that we shall apply to their honors the judges of the sixth circuit court of the United States for the

district of Georgia, by petition now filed, on or before the rules day in June next, for leave to amend the bill in the above case by introducing into said bill the proceedings of the Supreme Court of the United States at January, term, 1828, in the case of Breithaupt & Shultz vs. the Bank of the State of Georgia and others, with proper charges and allegations. Respectfully,

WM. & WM. F. LAW, *Complainants' Solicitors.*

SAVANNAH, 11*th May*, 1846.

I have received a copy of the within notice by the hands of Caleb H. Lindsey.

A. J. MILLER,
Solicitor for the City Council of A.

AUGUSTA, *May* 13*th*, 1846.

Service of the within notice acknowledged this 18th May, 1846.

THOS. E. LLOYD,
Sol. pro G. B. Lamar.

Filed, 9th July, 1846.

G. GLEN, *Cl'k.*

Sixth circuit court United States, district of Georgia.

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, compl'ts, and THE BANK OF THE STATE OF GEORGIA, John McKinne, G. B. Lamar, and the City Council of Augusta, def'ts. } In equity.

Amendment of the foregoing bill of complaint, to come in and form a part of the original bill at the end of the fifth paragraph, in page six of the said bill, viz:

And your orators, by leave of the court first had and obtained, for the amendment of their said bill, further shew to your honors, that the said mandate of the said Supreme Court of the United States was and is in the words following, to wit: "This cause came on to be heard on the transcript of the record of the circuit court of the United States for the sixth circuit and district of Georgia; and on the points on which the judges of that court were divided in opinion, and which were certified to this court, and was argued by counsel; on consideration whereof this court is of opinion, that, as the bill does not aver that the corporators of the Bank of the State of Georgia, which bank is defendant in the suit, are citizens of the State of Georgia, the circuit court has no jurisdiction of the cause, and can grant no relief. It is therefore ordered to be certified to the said circuit court, as the opinion of this court, that, in the present state of pleadings, it not appearing that the defendants are citizens of the State of Georgia, the complainants are not entitled to relief in that court.

And whereas at January term, 1830, by consent of parties, the said cause was reinstated on the calendar of this court, and the bill amend-

ed, by avering the citizenship of the several defendants; which said amendment, as appears by the transcript of the record whereupon the same was made, reference being had thereto, is as follows, to wit: And the said complainants aver that the president, directors, and stockholders of the Bank of the State of Georgia are citizens of the State of Georgia; and that John McKinne, Barna McKinne, Anselm Bugg, Walton Knight, Joseph Rogers, George Bleen, Brewer and Aspinwall, and Robert Latton, are also citizens of the State of Georgia.

And afterwards, to wit, at the same term of the court aforesaid, the said cause came on to be heard, and the following decree was entered, to wit:

"This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Georgia, and on the certificate of division of the judges thereof; on consideration whereof this court is of opinion that the whole cause, and not a point or points in the cause, has been adjourned to this court. Whereupon, it is ordered and adjudged by this court, that this cause be, and the same is hereby, remanded to the said circuit court, with directions to proceed therein according to law."

The following amendment will come in at the end of the second paragraph, at page 11, of the original bill:

And your orators further shew to your honors, that they are advised and believe, and therefore insist, that the final decree of this honorable court on said original bill is void as to all the parties to the said bill, and as to all persons whatever; because, the said Supreme Court of the United States had no jurisdiction of the said cause in the term of January, 1830, when the decree referred to in the said mandate purports to have been made, the same having been already remanded to this honorable court by the order made by the said Supreme Court, in January term, 1828, directing its opinion to be certified to this honorable court on the points in the said cause on which the judges thereof were divided.

WM. Y. HANSELL,
WM. & WM. F. LAW,
Comp'ts solicitors.

Filed, June 10, 1846. G. GLEN, *Cl'k.*

CHARLESTON, 12th May, 1846.

Shultz vs. The Bank.

Gentlemen: We acknowledge with pleasure your notice of the 11th instant, by mail, of the intention to file a petition to amend the bill, and the nature of the proposed amendment. We refer with entire confidence to Mr. McAllister the subject of the petition, and will be well satisfied with his decision.

Very respectfully, your ob't servants,
PETIGRU & LESESNE.

To Messrs. W. & W. F. LAW,
Savannah, Georgia.

Filed, July 9, 1846. G. GLEN, *Cl'k.*

district of Georgia, by petition now filed, on or before the rules day in June next, for leave to amend the bill in the above case by introducing into said bill the proceedings of the Supreme Court of the United States at January, term, 1828, in the case of Breithaupt & Shultz vs. the Bank of the State of Georgia and others, with proper charges and allegations. Respectfully,

WM. & WM. F. LAW, *Complainants' Solicitors.*

SAVANNAH, 11*th May*, 1846.

I have received a copy of the within notice by the hands of Caleb H. Lindsey.

A. J. MILLER,
Solicitor for the City Council of A.

AUGUSTA, *May* 13*th*, 1846.

Service of the within notice acknowledged this 18th May, 1846.

THOS. E. LLOYD,
Sol. pro G. B. Lamar.

Filed, 9th July, 1846.

G. GLEN, *Cl'k.*

Sixth circuit court United States, district of Georgia.

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, compl'ts, and THE BANK OF THE STATE OF GEORGIA, John McKinne, G. B. Lamar, and the City Council of Augusta, def'ts. } In equity.

Amendment of the foregoing bill of complaint, to come in and form a part of the original bill at the end of the fifth paragraph, in page six of the said bill, viz:

And your oratois, by leave of the court first had and obtained, for the amendment of their said bill, further shew to your honors, that the said mandate of the said Supreme Court of the United States was and is in the words following, to wit: "This cause came on to be heard on the transcript of the record of the circuit court of the United States for the sixth circuit and district of Georgia; and on the points on which the judges of that court were divided in opinion, and which were certified to this court, and was argued by counsel; on consideration whereof this court is of opinion, that, as the bill does not aver that the corporators of the Bank of the State of Georgia, which bank is defendant in the suit, are citizens of the State of Georgia, the circuit court has no jurisdiction of the cause, and can grant no relief. It is therefore ordered to be certified to the said circuit court, as the opinion of this court, that, in the present state of pleadings, it not appearing that the defendants are citizens of the State of Georgia, the complainants are not entitled to relief in that court.

And whereas at January term, 1830, by consent of parties, the said cause was reinstated on the calendar of this court, and the bill amend-

ed, by avering the citizenship of the several defendants; which said amendment, as appears by the transcript of the record whereupon the same was made, reference being had thereto, is as follows, to wit: And the said complainants aver that the president, directors, and stockholders of the Bank of the State of Georgia are citizens of the State of Georgia; and that John McKinne, Barna McKinne, Anselm Bugg, Walton Knight, Joseph Rogers, George Bleen, Brewer and Aspinwall, and Robert Latton, are also citizens of the State of Georgia.

And afterwards, to wit, at the same term of the court aforesaid, the said cause came on to be heard, and the following decree was entered, to wit:

"This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Georgia, and on the certificate of division of the judges thereof; on consideration whereof this court is of opinion that the whole cause, and not a point or points in the cause, has been adjourned to this court. Whereupon, it is ordered and adjudged by this court, that this cause be, and the same is hereby, remanded to the said circuit court, with directions to proceed therein according to law."

The following amendment will come in at the end of the second paragraph, at page 11, of the original bill:

And your orators further shew to your honors, that they are advised and believe, and therefore insist, that the final decree of this honorable court on said original bill is void as to all the parties to the said bill, and as to all persons whatever; because, the said Supreme Court of the United States had no jurisdiction of the said cause in the term of January, 1830, when the decree referred to in the said mandate purports to have been made, the same having been already remanded to this honorable court by the order made by the said Supreme Court, in January term, 1828, directing its opinion to be certified to this honorable court on the points in the said cause on which the judges thereof were divided.

WM. Y. HANSELL,
WM. & WM. F. LAW,
Comp'ts solicitors.

Filed, June 10, 1846. G. GLEN, *Cl'k.*

CHARLESTON, 12th May, 1846.

Shultz vs. The Bank.

Gentlemen: We acknowledge with pleasure your notice of the 11th instant, by mail, of the intention to file a petition to amend the bill, and the nature of the proposed amendment. We refer with entire confidence to Mr. McAllister the subject of the petition, and will be well satisfied with his decision.

Very respectfully, your ob't servants,
PETIGRU & LESESNE.

To Messrs. W. & W. F. LAW,
Savannah, Georgia.

Filed, July 9, 1846. G. GLEN, *Cl'k.*

Sixth circuit court, U. S., district of Georgia.—Adjourned April term, 1846.

JOHN W. YARBOROUGH & HENRY SHULTZ,
vs.
THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta. } In equity.

This cause came on to be heard at the adjourned term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows, viz: that the demurrers filed in above case be deemed sufficient, and that the same do stand and be allowed, and that the bill of complainants be dismissed with costs. 27th July, 1846.

Filed, July 27, 1846. G. GLEN, *Cl'k.*

In the sixth circuit court of the United States for the district of Georgia. April adjourned term, 1846.

JOHN W. YARBOROUGH, trustee, and Henry Shultz, compl'ts,
and
THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, df'ts. } In equity.

To the honorable the judges of the sixth circuit court aforesaid.

The petition of the complainants filed now, to wit, at the present April adjourned term of the sixth circuit court of the United States for the district of Georgia, in the year eighteen hundred and forty-six, respectfully shew, that at the said term of this honorable court a decree has been pronounced and entered in said cause, sustaining the demurrers, and dismissing the bill of your petitioners. Your petitioners are advised and believe that they have good grounds of appeal from the said decision and decree, and therefore respectfully they pray an appeal therefrom to the Supreme Court of the United States, to be holden at the Capitol, in the city of Washington, on the first Monday in December next, on such terms as may be prescribed and approved by this honorable court, or one of the judges thereof. And your petitioners further pray this honorable court to order and direct that the pleadings, other proceedings remaining of record, and the decree of this court, be sent up and returned to the Supreme Court of the United States, at the time and place aforesaid, then and there to hear and determine the same.

And your petitioners will ever pray.

WM. Y. HANSELL,
WM. & WM. F. LAW,
Complts' solicitors.

Be it so. Savannah, July 27, 1846.

JAMES M. WAYNE,
JNO. C. NICOLL.

1100.

UNITED STATES OF AMERICA, *district of Georgia.*

In the circuit court of the United States, for the sixth circuit and district of Georgia.

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants,
and
THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants.

Know all men by these presents, that we, John W. Yarborough, trustee for the creditors of Henry Shultz, and for Henry Shultz, an insolvent debtor, by William Law, his attorney in fact, and Henry Shultz, and George W. Fish, by his attorney in fact, William Law, are held and firmly bound unto the Bank of the State of Georgia, John McKinne, Gazaway B. Lamar and the City Council of Augusta, their attorney or attorneys, executors, administrators, or assigns, in the full and just sum of fifteen hundred dollars, money of the United States of America; for which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at Savannah, in the district aforesaid, this twenty-second day of January, in the year of our Lord one thousand eight hundred and forty-seven.

Whereas the said defendants filed demurrers to the bill of the complainants, to revive a certain cause in equity in the said court, wherein Henry Shultz and Christian Breithaupt were complainants, and the Bank of the State of Georgia and others, were defendants, and the said court, after hearing argument, did order, adjudge, and decree, that the demurrers filed in the said case be deemed sufficient, and that the same do stand and be allowed, and that the bill of the complainants be dismissed with costs; with which decree of the said circuit court the said complainants are dissatisfied, and did pray an appeal to the Supreme Court of the United States, which said prayer was made in open court and allowed. Now, the condition of this obligation is such, that if the said John W. Yarborough, of the State of South Carolina, trustee as aforesaid, and the said Henry Shultz of the said State, or either of them, their or either of their attorneys, executors, or administrators, shall prosecute the said appeal to effect and answer all damages and costs which may be decreed against them, then this obligation to be void, or else to remain in full force and virtue.

HENRY SHULTZ, [L. S.]
JOHN W. YARBOROUGH,
By WM. LAW, *his att'y*, [L. S.]
GEORGE W. FISH,
By WM. LAW, *his att'y*. [L. S.]

Signed, sealed, and delivered, in the presence of—
JNO. C. NICOLL,
District judge for the dist. of Georgia.

Approved: JNO. C. NICOLL,
Dist. judge for the dist. of Georgia.

Filed January 22d, 1847.

GEO. GLEN, *Clerk.*

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants,
vs.
THE BANK OF THE STATE OF GEORGIA, and other defendants.
} In equity.

In the sixth circuit court of the United States, for the district of Georgia.

The several answer of John McKinne, one of the defendants to the bill of complaint of John W. Yarborough, trustee, and Henry Shultz, complainants, in the above bill of complaint.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit of advantage of exception, which can or may be had or taken to the many uncertainties and imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, he answering saith, to the first interrogatory to the said bill, that on or about the first day of July, eighteen hundred and sixteen, the complainant, Henry Shultz, and this defendant, did form such a partnership as is mentioned in this interrogatory, which partnership was publicly known as the "Bridge Company of Augusta."

To the second interrogatory he answers and says, that the complainant, Henry Shultz, and this defendant, were the sole joint owners of the bridge across the Savannah river, opposite the city of Augusta, at the time said partnership was entered into, and that it was then agreed to between the parties, Henry Shultz and this defendant, that the said bridge, with other partnership property, should constitute and remain a partnership capital or fund, which neither of the parties should have power to alienate for his individual debts, but which property should be kept and held as a capital or stock, and liable for the redemption of Bridge Company bills issued or to be issued by said company, in exclusion of the private debts of either of the parties, or both.

In answer to the third interrogatory he says, that such was the agreement and understanding at the time of the formation of the partnership, and that the same was never changed, altered, or annulled by the parties.

In answer to the fourth interrogatory, this defendant admits that the said bridge was entered on the books of the Bridge Company as partnership property, and as a part of the banking capital of said Bridge Company, and at the price of seventy-five thousand dollars; and this

defendant knows of no change or alteration of said entries as to amount or otherwise.

In relation to the fifth interrogatory this defendant says, that the bills of the said Bridge Company were drawn in the following form:

The Bridge Company of Augusta promise to pay
, or bearer, dollars, on demand,
at their office.
Augusta, , 181 .
(Signed) JOHN McKINNE, } *Proprietors.*
HENRY SHULTZ, }

Which bills were all stamped on their face with a representation of said bridge; they circulated as other current bank bills or money, and no fact could have been more publicly known than that the bridge was partnership property, and responsible for the payment of the bills issued by the said Bridge Company.

To the sixth interrogatory this defendant answers and says, that, on on the 24th day of May, 1819, the Bridge Bank did stop payment. On which day, and before the doors of the bank were opened, Barna McKinne agreed (so soon as it could be consummated,) to reconvey to the said Henry Shultz the entire property of, and interest in, the Bridge Company which the said Shultz had previously conveyed to the said Barna. In consequence of which agreement, the said Henry Shultz did, on the same day, so soon as the doors of the bank were opened, and a number of holders of Bridge bills had passed in, publicly proclaim, to a large number of persons there assembled at the bank, and requiring payment of the bills held by them, that he had reassumed his former position and liabilities in said company, and declared his own liability, as well as that of the bridge and all other partnership property, for the speedy payment of all outstanding Bridge bills; and, on the next day, (25th May, 1819,) the said Henry Shultz did, in consequence of the agreement with Barna McKinne the day before, deliver to the cashier of the said bank about fifteen thousand dollars, out of his own private funds, to aid in paying the individual deposites that had been made in said bank. To the seventh interrogatory he answers and says, that this defendant and Barna McKinne did, on or about the third day of May, 1819, execute a mortgage on eighty negroes, and McKinne's warehouse square, (all private property,) and the Augusta bridge, with its appurtenances, to secure a debt amounting to about forty thousand dollars, previously due the said Bank of the State of Georgia by this defendant, and one James Lamkin, then transacting a warehouse and commission business in Augusta, under the name and firm of McKinne & Co.; and also to secure the payment of a note of fifty thousand dollars, signed by this defendant and endorsed by Barna McKinne and James Lamkin. This sum of fifty thousand dollars was not borrowed for the Bridge Company, but in part to aid in paying five drafts, each for ten thousand dollars, drawn by the firm of Pott & McKinne, of New York, on Barna McKinne, individually; to which purpose, twenty or thirty thousand dollars, this defendant does [not] now recollect which, were applied, and the remaining twenty or thirty thousand were used for

Bridge Bank purposes. And whilst this defendant readily admits that he did execute this mortgage, he positively denies any fraud, or intended fraud, on his part; but, on the contrary, avers that it was his honest and bona fide intention to pay every dollar mentioned in said mortgage without impairing the rights of the holders of Bridge bills, or the partnership property, subject to their redemption; and which mortgage he contends and believes, has long since been paid off, without impairing the lien of the creditors of the Bridge Company on the said bridge as partnership property. This defendant further admits, that he and Barna McKinne did, on or about the tenth day of June, 1819, execute to the Bank of the State of Georgia another mortgage on the same property, and for the same purposes as the previous mortgage of the third day of May then last past; and that it was not executed for any additional sum or sums of money, debt, or liability, whatever, but was given in lieu of the one of the third day of May, 1819, and to correct some alleged informality only, as to the corporate name of the bank, which the persons acting for the mortgage wished to have corrected; but the fact has proven otherwise, as the name of James Lamkin (unknown to this defendant for a long period subsequent thereto,) was left out of the second mortgage, for what purpose this defendant knows not, and that of Barna KcKinne substituted in place of Lamkin's. These two mortgages ever having been considered as one only by all parties in interest, the first having been given up and cancelled, and the second being substituted in its place.

In answer to the eighth interrogatory this defendant says, that all the property included in the mortgage is fully mentioned in his answer to the last preceding interrogatory. As to the pecuniary circumstances of this defendant in May, 1819, he confidently avers, that he was not only solvent, but would have had an ample independency left, after paying every just demand against him, had it not been for the vindictive rapacity with which the agents of the Bank of the State of Georgia, at Augusta, pursued him; for, as soon as judgments had been obtained against him, these agents wrested from his possession every article of his property they could find; and, by sacrificing it at sheriff's sales, consummated a ruin they seemed to delight in. The pecuniary situation of Barna McKinne, in 1819, this defendant then believed to be entirely solvent, though many persons of high respectability, well acquainted with said Barna's affairs in Savannah, where he had recently resided, were and are of a different opinion; and the reasons given in support of these opinions are certainly entitled to much consideration.

To the tenth interrogatory he answers, that he is positive that the Bank of the State of Georgia never had any other right under the mortgage to the bridge, than its foreclosure gave, as no sale under said foreclosure ever was made. Whether the mortgage (under the circumstances of the case) was null and void, this defendant has not sufficient legal knowledge to say, though he does say, that it never was his intention that it should be void, until fully paid, which this defendant avers has long since been done.

In answer to the fourteenth interrogatory this defendant says, that at the instance of some person or persons, having, or pretending to have, an interest in said bridge, an order was obtained, (as this defendant has understood and believes) from the judges of the Federal court to have the bridge sold, which order would have been complied with, but for the non-consent and protestations of this defendant, whose dissent was reported to the court, by the persons appointed commissioners to make said sale, in substance, as follows: "That they proceeded to advertise the same (the bridge) for sale, and appointed Thursday the eleventh day of April, 1822, for that purpose; but before that period arrived, information was received that Col. John McKinne was also a defendant, and as no letter of attorney had been received from him, the commissioners could not conceive themselves authorized to dispose of the property in question; that personal application was made to Col. McKinne, and he was earnestly solicited to grant his authority and permission to sell, but he positively refused." And this defendant says, that he never did consent to any sale of said bridge by said commissioners or by any one else, under any process, order, or decree of any court.

To the twenty-first interrogatory, he answers and says, that since the execution of that mortgage, this defendant has, at various times and in divers ways, personally paid to the Bank of the State of Georgia large sums of money (the different items of which he cannot at this moment ascertain) on account of the mortgage, which, with the proceeds of the warehouse square, and the eighty negroes, this defendant verily believes would very nearly, if not entirely, extinguish the mortgage debt; but as the bank has always refused to render any account of what was received from the sale of the negroes, this defendant never has been enabled to come to such a settlement as would put it in his power to say distinctly what amount has been paid, though this defendant firmly believes it to be larger than the mortgage debt. This defendant admits that, in the year 1828, he did execute a quit-claim deed to all the right, title, interest, or claim, which he *then* possessed to the Augusta bridge, which quit-claim, however, was not intended in the remotest degree to affect the claims of Bridge Company creditors or those of this defendant individually. In consideration of which quit-claim, this defendant did receive a discharge from all debts, claims, or demands, which the Bank of the State of Georgia had against him; a copy of which is herewith filed, exhibit A, which this defendant prays may be taken as part of his answer.

In answer to the twenty-second interrogatory he says, that the circumstances named in this interrogatory were not known to this defendant only from common report, nor does he know that the other defendants, named in the bill were acquainted with them.

To the twenty-third interrogatory he answers, that if such appointment was made, it was unknown to this defendant.

To the twenty-fourth interrogatory he answers, that he knows not.

To the twenty-fifth interrogatory he answers, that he knows not.

To the twenty-sixth interrogatory he answers, that as he is entirely unacquainted with the form and nature of the decree referred to, he cannot say whether it is or is not in accordance, but this he can and does say and aver, that he has never authorized any attorney, solicitor, or counsellor, court or individual, to make or consent to any decree, order, sale, or transfer of the said bridge, or his interest therein, and its appurtenances; and that if any such decree, order, sale, or transfer has been made by any person as his agent, it is illegal and entirely void, as it was without the knowledge or consent of this defendant, and without any legal process whatever, so far as this defendant knows or believes. And this defendant denies all fraud and combination wherewith he may stand charged by the complainants in their said bill of complaint; and having fully answered, as he humbly conceives, prays to be hence dismissed with his reasonable costs in this behalf sustained.

JONES & BENNING,
Solicitors for defendant.

GEORGIA, *Richmond county:*

The defendant, John McKinne, being duly sworn, deposeth and saith, that the matters and things contained in the foregoing answer, so far as they come to the knowledge of deponent, are true, and so much and such parts thereof as are derived from the information of others, he believes to be true.

JOHN McKINNE.

Sworn to and subscribed before me, this 24th day of October, 1845.
JESSE KENT, *J. J. C. R. C.*

I, George Glen, clerk of the circuit court of the United States in and for the sixth circuit and district of Georgia, hereby certify that the foregoing is a true and correct copy of the answer of John McKinne to a bill filed in the said court by John W. Yarborough, trustee, and Henry Shultz, against the Bank of the State of Georgia and others.

In testimony whereof, I have hereto set my hand, and affixed the [L. S.] seal of the said court, this 19th day of November, A. D. 1845.

GEO. GLEN, *Clerk.*

UNITED STATES OF AMERICA, *district of Georgia, ss:*

I, George Glen, clerk of the circuit court of the United States for the district of Georgia, do hereby certify, that the preceding and annexed writing is a true and perfect transcript of the record and proceedings remaining in said court in the cause therein mentioned, taken from, and by me carefully compared with, the originals filed and being of record in my office.

In witness whereof, I have hereto set my hand, and affixed the seal of the said circuit court, this twenty-second day of January, [SEAL.] in the year of our Lord one thousand eight hundred and forty-seven.

GEO. GLEN, *Cl'k.*

And I do hereby further certify, that the answer of John McKinne in said cause has, since the trial of the case, been misplaced, and cannot be found, and that the annexed is a copy of said original answer taken by me, and carefully compared, while the said original was in my office.

GEO. GLEN, *Cl'k.*

UNITED STATES OF AMERICA, *district of Georgia, ss:*

I, John C. Nicoll, judge of the district court of the United States for the district of Georgia, do hereby certify, that George Glen, who signed the within certificate, is, and was at the time of signing the same, the clerk of the district and circuit courts of the United States for the district of Georgia; that full faith and credit ought to be given to his acts and attestations as such, and that his said certificate and authentication of the foregoing transcript is in due form.

In witness whereof, I have hereto set my hand this twenty-second day of January, in the year of our Lord 1847.

JNO. C. NICOLL, *Dist. judge.*

Filed 26th January, 1847.